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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,234	04/24/2000	Patrick J. O'Donnell	PODON.001A	8230

20995 7590 09/24/2002

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EXAMINER

Valenti, Andrea M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/557,234

Applicant(s)

O DONNELL, PATRICK J.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-28 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-28 and 33-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3000

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 12 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 20, and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimbrew-Walter Roses “Jet-All” sprayer.

Regarding Claims 19, 20, and 36, “Jet-All” teaches the method of a hand held spraying apparatus in which the nozzle is placed adjacent an underside of a plant leaf. The apparatus comprises a handle, an elongated body portion, a nozzle portion at a distal end of the body portion, and the nozzle portion adapted to direct water flow outwardly from the circumference of the nozzle portion, a longitudinal axis of the nozzle is generally horizontal. The “Jet-All” method includes providing a source of water under pressure, placing the spraying apparatus into communication with the source of water under pressure, and advancing and retracting the apparatus so that a flow of water impacts the undersurface of the leaf (see attached brochure page).

Furthermore, “Jet-all” inherently teaches that rotating the apparatus so that the longitudinal axis of the nozzle moves toward a second elevation but remains generally horizontally disposed during rotation; and advancing and retracting the nozzle generally horizontally.

Regarding Claim 35, "Jet-All" teaches the broadly presented claim language that the elongated body and the nozzle portion being **substantially** straight and having **substantially** the same longitudinal axis.

Regarding Claim 37, "Jet-All" inherently teaches the step of holding the elongated body at a generally horizontal attitude and advancing and retracting the nozzle through the application of the apparatus to a variety of different size plants.

Regarding Claim 38, "Jet-All" teaches that elongated body is at least 18 inches long (See "Jet-All" flier).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claim 18, "Jet-All" is silent on the handle portion and the body portion comprising a plurality of modules. However, it would have been obvious to one of ordinary skill in the art to modify the integral design of "Jet-All" with modules since the modification is merely making something separable for ease of routine maintenance and compact storage and does not present a patentably distinct limitation. [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)]

Claims 21-28, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimbrew-Walter Roses "Jet-All" sprayer in view of U.S. Patent No. 5,573,187 to Ronnie E. Proctor

Regarding Claim 21, "Jet-All" is silent on the nozzle being adapted to direct flow of water in a substantially vertical plane. However, Proctor teaches a hand held spraying apparatus with a nozzle that projects the water in a substantially vertical plane (Proctor Fig. 1 vertical wall spray lines). It would have been obvious to one of ordinary skill in the art to modify the teachings of "Jet-All" with the teachings of Proctor since the distal sections of each apparatus is merely an alternate equivalent nozzle extension off of a handle and the modification is merely a change in shape/orientation to enhance the ergonomic design of the apparatus and to increase the spray coverage area for different size/shape of plants.

Regarding Claim 22, "Jet-All" as modified teaches that at least one of the substantially vertical planes is substantially perpendicular to the nozzle portion and inherently comprising the step of holding the elongated body in a substantially horizontal attitude (Proctor Fig. 1 Element #20 and water spray lines).

Regarding Claim 23 and 33, "Jet-All" as modified teaches that the handle includes a bend point and inherently teaches the step of adjusting the elevation of the body portion by rotating the handle about a proximal end of the handle.

Regarding Claim 24, "Jet-All" as modified inherently discloses advancing and retracting the apparatus into and out of the plant at a plurality of locations, so that water directed by the nozzle simultaneously impacts the top side of a first plant leaf along at

least a portion of its length and the underside of a second plant leaf along at least a portion of its length (Proctor Fig. 1 water spray lines).

Regarding Claim 25 and 34, "Jet-All" as modified discloses that the nozzle is adapted to create a substantially planar contiguous wall of water around the circumference of the nozzle (Proctor Fig. 1 water spray lines, Element #38 and 20, Col. 3 line 40-41).

Regarding Claim 26, "Jet-All" as modified discloses that the nozzle is adapted to create two or more substantially planar and contiguous walls of water around the circumference of the nozzle, the walls of water being spaced apart from each other (Proctor Fig. 1 water spray lines, Element #38 and 20).

Regarding Claims 27 and 28, "Jet-All" as modified inherently discloses advancing and retracting the nozzle between leaves of the plant at a plurality of locations, so that the portions of the wall of water simultaneously impact undersides of leaves generally above the nozzle, top sides of leaves generally below the nozzle, and any matter that may be between the leaves of the plant.

### ***Response to Arguments***

Applicant's arguments filed 12 September 2002 have been fully considered but they are not persuasive.

Examiner maintains that "Jet-All" inherently teaches the method steps of the presented claims and that it would have been obvious to one of ordinary skill in the art to combine the teachings of Proctor and "Jet-All." Examiner maintains that Applicant's

method and claim language does not distinctively claim the apparatus over that of prior art.

Applicant does not clearly define the amount of rotation. Any subtle movement, which is inherent in human operation of the apparatus, will result in "rotation". Does applicant intend a 90 or 180 degree rotation or rotation to a certain level of the plant?

Furthermore, applicant needs to more clearly define the nozzle in the claim language. Currently, the broad claim language can be interpreted that any segment at the distal end of the wand is a "nozzle portion" that will retain its attitude at any elevation.

Examiner maintains that one of ordinary skill in the art would look to the teachings of Proctor as a known shape for dispensing a fluid. "Jet-All" teaches the method of using pressurized water to remove insects from the underside of a plant. Proctor teaches an alternate equivalent controlled liquid dispensing means that one of ordinary skill would look towards for an ergonomic means of effectively treating all portions of the plant. Water wands and hand held herbicide applicator wands are old and notoriously well known applicators that are inherently rotated during operation.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, examiner maintains that there is motivation to look to the teachings of Proctor. Proctor and “Jet-All” are alternate equivalent hand held water spraying apparatuses, both used to produce a planar wall to clean the surface of an object. Examiner maintains that both apparatuses serve similar design goals of effectively cleaning a surface area in an efficient and timely manner. Proctor teaches that the distal end nozzle extension can have a straight configuration, with a double wall of water, and complete circumferential nozzle coverage. One of ordinary skill in the art would look to modify the ‘curved head’ of “Jet-All” with the teachings of Proctor to effectively and efficiently treat all threatened areas of a variety of plant types. Each type of plant presents different spatial constraints (e.g. tall thin tree, short bush with dense foliage, etc.) and Proctor presents a well-known alternative to the shape taught by “Jet-All” to meet these constraints.

In addition, Examiner maintains that “Jet-All” inherently teaches the method steps of presented claims. How the user orientates the apparatus of “Jet-All” depends primarily on the size of the plant being treated. One of ordinary skill in the art would inherently rotate the apparatus to reach different parts of the plant because the damaging bugs, i.e. aphids, adhere to all surface levels of the plant. Furthermore, the apparatus is moved inwardly when inserting the apparatus under a leaf and to reach the stalk and subsequently moved outwardly when proceeding to another leaf of plant.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-



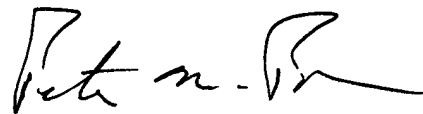
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3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
September 20, 2002

A handwritten signature in black ink, appearing to read "Peter M. Poon", with a stylized flourish at the end.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600